

May Simmons
610 Main Street
Polson Mt 59860

June 26, 2017

Law and Justice Committee
Helena Mt

Dear Committee Members,

Enclosed are copies of documents proving rape by staff at the Montana Women's Prison. These rapes have been covered up for many yrs. I, myself, wrote to the Billings Police Department many times myself and Detective Rasco has said they never received one letter.

The Mt DOC has had a lot of fun in their attempts to destroy me. Billings PD was not impressed with their attempt to discredit me when they were ordered by the Yellowstone County Attorney to investigate and arrest Manual Zuniga for rape. The case is still open.

Adrienne Slaughter has told Rep Greg Hertz I am the most toxic liar DOC ever encountered but all along I was not lying. I know they have said that to many previous L and J committee members. Adrienne Slaughter has made it a point to block me from any attempts I have made to work in the re-entry would.

I have an email from my former PO Amy Rebein that states, "you will not be allowed to work on any parole plans while you speak out against this office." This is against the Mt Human Rights Statues. You can't discriminate against someone for their political activities. Polson P and P does this to me regularly.


However, the Lewis and Clark District Court filings stand for themselves. As does the POST Revocation Notice. I am not a liar. In their many attempts to harass me, DOC still has me checking in every month. I have been home over 3 yrs. Yup still once a month. When compared to others who have been home less than me, and had violations those people are checking in every 3 to 6 months. Felons in other districts like Billings and Missoula are actively working on re-entry. In fact in Billings a group of felons just had several sober living homes approved by the Billings P and P office.

Does this sound odd to you? It does to most people.

There are hundreds of female victims out here. I mean hundreds. Victims of Manual Zuniga, Mark Kotrck, Chaplain Charlie McMurray, Officer Lancaster, Officer Miller, Officer Hoffman, Officer Lusby, Officer Redcrow, Officer Miller and many more. Over 25 names in all.

Those ^{officers} men have committed crimes. They are rapist as defined by federal and state law. DOC just hides covers it up and makes the life of someone who reports it, a living hell.

Sincerely,


May Simmons

Encl: (1) Ltr to Sen Tester 1 pg
(2) Lewis & Clark Docket Report 3pgs
(3) Scarborough vs DOC & Fred Hoffman 5pgs
(4) Post Revocation of Manual Zuniga 10pgs

May Simmons

610 Main Street

Polson Mt 59860

June 26, 2017

Honorable Senator Jon Tester

8 3rd St E,

Kalispell, MT 59901

Dear Senator Tester,

Your staff has heard from about this issue before. It is about the Mt Department of Corrections, specifically the Women's Prison. But, recently the Mt Department of Corrections has made claims they are PREA complaint with federal regulations.

I do not know how this is possible because they have not followed a single regulation about the past 7 1/2 yrs I have filed PREA complaints. Last yr the DOC PREA investigator allegedly opened a PREA investigation but it's not ever been completed. This is a direct violation of the Federal PREA guidelines and should be grounds for removing their alleged complaint status.

The federal guidelines state when PREA is reported an investigation is opened, investigated and a report is given to the reporter. In that case that would be me. However, since the claim was opened in April 2016 none of the federal guidelines have been done.

I have left many messages for the investigator and never receive a return call. When he does pick up his phone, I have to start all over again with the details of the case. I don't understand why he can't remember the details because according to state's POST revocation motion in Feb 2017, it seems DOC knew all along he was a rapist and finally reported the issue themselves in 2013.

When I received the POST revocation document, I called the investigators boss in Quality Assurance and he stated to me "retaliation is not part of the PREA regs". He is extremely ignorant of the Federal PREA regulations. I have contacted a national foundation who specializes in training organization like DOC in PREA policies and procedures. Retaliation is a major part of the regulations.

There are some lies going on. This can only be one of 2 ways. Either DOC lied to the federal government and falsified their PREA compliance or he is part of the conspiracy to shut me the hell up. I tend to believe it's the latter. Either way I, want this issue investigated. If it's a training issue (which I highly doubt) then lets get them some training. If it's the conspiracy I believe it is then the federal government is obligated to open an investigation into their illegal activities.

Regardless, their alleged PREA compliance needs to be investigated because they are not in compliance with Federal PREA regulations. My case if proof of that.

Sincerely,

May Simmons

ate: 4/11/2017
me: 12:21 PM
age 1 of 3

Lewis & Clark County District Court

User: TPAASO

Case Register Report
DV-25-2013-0000705-DS

Amy Scarborough vs. Montana Department Of Corrections, et al.

led: 9/30/2013
ubtype: Damages

Status History

Open 9/30/2013
Closed 6/6/2016

Plaintiffs

Pl. no. 1 Scarborough, Amy

Attorneys

Waterman, Ronald F. (Primary attorney) Send Notices

Defendants

Def. no. 1 Montana Department Of Corrections

Attorneys

Davis, Maxon R. (Primary attorney) Send Notices

Def. no. 2 Hoffman, Fred

Attorneys

Pro Se, (Primary attorney) Send Notices

Judge History

Date	Judge	Reason for Removal
9/30/2013	Seeley, Kathy	Current

Register of Actions

Doc. Seq.	Entered	Filed	Text	Judge
1.000	09/30/2013	09/30/2013	Complaint - Summons issued (2)	Seeley, Kathy
2.000	10/25/2013	10/24/2013	Notice of Filing Return of Service (original summons with return attached) - Plaintiff	Seeley, Kathy
3.000	11/08/2013	11/07/2013	(Fax) Certificate of Service - Defendant	Seeley, Kathy
4.000	11/19/2013	11/14/2013	Affidavit of Inability to Pay Filing Fees and Other Costs (Fred Hoffman) - Approved	Seeley, Kathy
5.000	11/29/2013	11/29/2013	Response - Defendant, Fred Hoffman	Seeley, Kathy
6.000	11/29/2013	11/29/2013	Certificate Of Service - Defendant, Fred Hoffman	Seeley, Kathy
7.000	12/27/2013	12/26/2013	Summons (original) With Return - Mary Warhank for Attorney General and Jena LaMoure for Montana Department of Corrections, 12/11/2013	Seeley, Kathy
8.000	01/27/2014	01/24/2014	Request for Entry of Default - Plaintiff	Seeley, Kathy
9.000	01/27/2014	01/24/2014	Entry of Default	Seeley, Kathy
10.000	02/10/2014	01/30/2014	Motion to Set Aside Entry of Default - Defendants	Seeley, Kathy
11.000	02/10/2014	01/30/2014	Notice of Intent to Enter Default Judgment and Notice of Hearing - Plaintiff	Seeley, Kathy
12.000	02/10/2014	02/04/2014	Brief in Support of Motion to Set Aside Entry of Default - Defendants	Seeley, Kathy
13.000	02/10/2014	02/04/2014	Affidavit of Monica Abbott - Defendants	Seeley, Kathy
14.000	02/21/2014	02/12/2014	Stipulation To Set Aside Default	Seeley, Kathy
15.000	02/21/2014	02/13/2014	Order Setting Aside Default	Seeley, Kathy
16.000	03/17/2014	03/13/2014	Defendant State of Montana's Answer and Jury Demand	Seeley, Kathy

Lewis & Clark County District Court

User: TPAASO

Case Register Report
DV-25-2013-0000705-DS

Amy Scarborough vs. Montana Department Of Corrections, et al.

Register of Actions

Doc. Seq.	Entered	Filed	Text	Judge
17.000	03/25/2014	03/18/2014	Minute Entry (3/18/2014) - Scheduling Conference set	Seeley, Kathy
18.000	04/15/2014	04/14/2014	Scheduling Order	Seeley, Kathy
19.000	06/13/2014	06/12/2014	Notice of Service of Plaintiff's First Discovery Requests to Defendants - Plaintiff	Seeley, Kathy
20.000	10/20/2014	10/17/2014	Notice Of Service Of Plaintiff's Responses To State's First Discovery Requests - Plaintiff	Seeley, Kathy
21.000	01/30/2015	01/29/2015	Notice of Deposition of Dale Tunnell	Seeley, Kathy
22.000	01/30/2015	01/29/2015	Notice of Deposition of Rich Collins	Seeley, Kathy
23.000	01/30/2015	01/29/2015	Notice of Deposition of Jean Harding	Seeley, Kathy
24.000	01/30/2015	01/29/2015	Notice of Deposition of Mike Aldrich	Seeley, Kathy
25.000	03/12/2015	03/11/2015	Plaintiff's Witness and Exhibit List	Seeley, Kathy
26.000	03/13/2015	03/12/2015	Defendant's Lay Witness And Exhibit List	Seeley, Kathy
27.000	04/14/2015	04/13/2015	Plaintiff's Expert Witness Disclosure	Seeley, Kathy
28.000	04/28/2015	04/27/2015	Defendant's Expert Disclosure	Seeley, Kathy
29.000	05/08/2015	05/07/2015	Unopposed Motion to Vacate Scheduling Order and Request for Scheduling Conference - Plaintiff	Seeley, Kathy
30.000	05/12/2015	05/11/2015	Order Vacating Scheduling Order and Setting Scheduling Conference	Seeley, Kathy
31.000	05/18/2015	05/13/2015	Notice of Deposition of Bob Paul - Plaintiff	Seeley, Kathy
32.000	05/18/2015	05/13/2015	Notice of Deposition of Fred Hoffman - Plaintiff	Seeley, Kathy
33.000	05/22/2015	05/20/2015	Notice of Deposition of Rich Collins - Plaintiff	Seeley, Kathy
34.000	05/22/2015	05/20/2015	Notice of Deposition of Dale Tunnell - Plaintiff	Seeley, Kathy
35.000	05/22/2015	05/20/2015	Notice of Deposition of Jean Harding - Plaintiff	Seeley, Kathy
36.000	05/22/2015	05/20/2015	Notice of Deposition of Mike Aldrich - Plaintiff	Seeley, Kathy
37.000	06/10/2015	06/08/2015	Scheduling Order	Seeley, Kathy
38.000	07/02/2015	07/01/2015	Notice of Cancellation of Deposition of Dale Tunnell - Plaintiff	Seeley, Kathy
39.000	07/16/2015	07/15/2015	Request for Release of Personnel and Criminal Justice Information - Plaintiff	Seeley, Kathy
40.000	07/24/2015	07/22/2015	Defendant State of Montana's Response to Plaintiff's Request for Release of Personnel and Criminal Justice Information	Seeley, Kathy
41.000	08/18/2015	08/12/2015	Order for In Camera Review	Seeley, Kathy
42.000	09/24/2015	09/16/2015	Order Following in Camera Review of Confidential Information	Seeley, Kathy
43.000	12/14/2015	12/11/2015	Notice Of Deposition By Video Of Dale Tunnell - Plaintiff	Seeley, Kathy
44.000	12/14/2015	12/11/2015	Notice Of Deposition By Video Of Rich Collins - Plaintiff	Seeley, Kathy
45.000	12/23/2015	12/17/2015	Amended Notice Of Deposition By Video Of Dale Tunnell - Plaintiff	Seeley, Kathy
46.000	12/23/2015	12/17/2015	Amended Notice Of Deposition By Video Of Rich Collins - Plaintiff	Seeley, Kathy
47.000	01/28/2016	01/21/2016	Settlement Conference Report - Case not Settled	Seeley, Kathy

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me: 12:21 PM
age 3 of 3

Lewis & Clark County District Court

Case Register Report
DV-25-2013-0000705-DS

User: TPAASO

Amy Scarborough vs. Montana Department Of Corrections, et al.

Register of Actions

Doc. Seq.	Entered	Filed	Text	Judge
48.000	04/11/2016	04/07/2016	Defendant's Lay Witness and Exhibit List	Seeley, Kathy
49.000	05/17/2016	05/16/2016	Plaintiff's Unopposed Motion To Approve Settlement	Seeley, Kathy
50.000	05/23/2016	05/19/2016	Order Approving Settlement	Seeley, Kathy
51.000	06/08/2016	06/03/2016	Stipulation For Dismissal With Prejudice	Seeley, Kathy
52.000	06/08/2016	06/06/2016	Order Of Dismissal With Prejudice	Seeley, Kathy

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NANCY SWEENEY
CLERK DISTRICT COURT

2013 SEP 20 PM 3:16

FILED
[Signature]

Attorneys for Plaintiff

MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

AMY SCARBOROUGH,

Plaintiff,

vs.

MONTANA DEPARTMENT OF
CORRECTIONS OF THE STATE OF
MONTANA AND FRED HOFFMAN,

Defendants.

Cause No. CDV-13-705

COMPLAINT

pd ✓ (2)

Comes now the Plaintiff in the above entitled matter and files this Complaint against the Defendants Department of Corrections of the State of Montana and Fred Hoffman.

Plaintiff was an inmate at Montana Women's Prison in Billings, Montana. At present, Plaintiff is a resident of Spokane, Washington.

Defendant Department of Corrections is an agency of state government of the State of Montana with its principal offices in Helena, Lewis and Clark County, Montana. The Montana Women's Prison is a facility operated under the direction and supervision of the Department of Corrections.

Defendant Fred Hoffman, was a resident of Billings, Yellowstone County, Montana.

Venue in Lewis and Clark County is proper for this litigation because the principal place of business of one of the Defendants is located in Helena, Lewis and Clark County, Montana.

Prior to October 3, 2011, Defendant Fred Hoffman was an employee of the Defendant Department of Corrections, working as a correctional officer at the Montana Women's Prison, in Billings, Montana.

Prior to October 3, 2011, Defendant Fred Hoffman was accused by other female inmates at Montana Women's Prison that he had sexually assaulted women inmates. These allegations became known to the Department of Corrections and were investigated by other individuals employed by or who were agents of the Department of Corrections.

Despite the fact that the investigations demonstrated that there was valid reasons to believe that the Defendant Hoffman had inappropriately sexually abused other women inmates at Montana Women's Prison, the Defendant Department of Corrections failed to take appropriate action and aside from telling the Defendant Hoffman not to act inappropriately in the future, no adverse employment action was taken against Mr. Hoffman.

Given the seriousness of the allegations and the apparent validity of the accusations, Defendant Department of Corrections should have either terminated Defendant Hoffman from employment, suspended Defendant Hoffman from employment pending training, provided further training to Defendant Hoffman, provided supervision to Defendant Hoffman or placed Defendant Hoffman in a position where he could not have further unsupervised access to female inmates at Montana Women's Prison.

Defendant Department of Corrections was negligent in its hiring, training, supervision and retention of Defendant Hoffman and due to its knowledge of Defendant Hoffman's previous

actions, was liable for his conduct including his inappropriate sexual conduct towards female inmates at the Montana Women's Prison. Knowing Defendant Hoffman's history of sexual assault against female inmates, the Defendant Department of Corrections was negligent in placing Defendant Hoffman in a position of authority over female inmates where he had the power and authority to learn of particular inmates vulnerabilities and to then order those inmates to follow his directions under threat of retaliation should the inmates not adhere to the directions of this Defendant.

Plaintiff Amy Scarborough was a inmate at Montana Women's Prison on October 3, 2011, with particular vulnerabilities and was susceptible to pressure brought by authority figures to perform acts which were contrary to the Plaintiff's well being.

The Defendant Department of Corrections knew or should have known both the Plaintiff's vulnerability regarding individuals in authority, including Defendant Fred Hoffman, but did not take reasonable precautions to protect Plaintiff from exposure to individuals such as Defendant Hoffman, who was known by the Defendant Department of Corrections to prey on vulnerable inmates.

On October 3, 2011, the Defendant Hoffman ordered Plaintiff to accompany him to a rest room in an isolated location within the Montana Women's Prison where there were no video cameras and Plaintiff did accompany the Defendant Hoffman as ordered.

Defendant was acting within the course and scope of his employment when he directed Plaintiff to accompany him to a remote location within Montana Women's Prison.

Defendant Hoffman knew that the Plaintiff was especially exposed to his desires because he knew that the Plaintiff was scheduled to have a Board of Pardons and Parole hearing in a short while after October 3, 2011 and that any adverse write up, such as refusing to obey the directions

of a correctional officer would likely result in Plaintiff's inability to gain parole which would allow her to serve the remainder of her sentence outside of a penal institution.

After Defendant Hoffman lead Plaintiff to an isolated area of the prison, the Defendant sexually assaulted the Plaintiff and then allowed her to return to her cell block and cell. Defendant Hoffman threatened the Plaintiff with adverse consequences in the event she reported Defendant Hoffman's conduct to others at Montana Women's Prison.

Defendant Hoffman's conduct of ordering a vulnerable inmate to accompany him to an isolated location within the Montana Women's Prison where no video cameras were located to view his actions was identical to the previous incident which the Department of Corrections had investigated and which had established facts which indicated that Defendant Hoffman was not appropriate to be allowed to be in a position of authority over inmates.

Following the sexual assault, Plaintiff returned to her cell very upset because she had been a victim of a sexual assault. Other inmates reported what they knew and had heard and seen to prison authorities.

Prison authorities conducted a full investigation, confronted Defendant Hoffman with the results of the investigation and Defendant Hoffman admitted to the sexual assault and was discharged from his position. The Defendant Department of Corrections refused to charge Defendant Hoffman with the crime of sexual assault and as such ratified his conduct as being within the course and scope of his employment.

Plaintiff was physically and emotionally injured and damaged by the sexual assault. She has been receiving psychological treatment following such assault and will require further and ongoing treatment to deal with the damages caused by the sexual assault.

Plaintiff has been damaged by the actions of the Defendants who are liable to her for all of the damages caused by the actions of Defendant Hoffman and the negligent actions and inactions of the Defendant Department of Corrections.

Defendant Hoffman acted with malice toward the Plaintiff, caused her to suffer damages and the Plaintiff is entitled to recover punitive damages from the Defendant Hoffman.

WHEREFORE, having fully stated her cause of action against the Defendants, the Plaintiff seeks the following relief:

1. For an award of damages against the Defendants for their acts and omissions in an amount which will compensate the Plaintiff for all actual physical, emotional and other damages including mental anguish caused by such acts and omissions.
2. For an award of punitive damages against the Defendant Hoffman.
3. For costs of suit.
4. For such other and further relief which the Court deems just under the premises.

Respectfully submitted this 30th day of September, 2013.

Gough, Shanahan, Johnson & Waterman, PLLP



Ronald F. Waterman
Attorney for Plaintiff

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8 **BEFORE THE PUBLIC SAFETY OFFICER STANDARDS**
9 **AND TRAINING COUNCIL, STATE OF MONTANA**

10 **IN THE MATTER OF THE**
11 **REVOCATION OF THE**
12 **CERTIFICATE OF MANUEL**
ZUNIGA

} **CASE NO. 13-01**
}
}

13 **NOTICE OF POST ACTION**
14 **AND OPPORTUNITY FOR HEARING**

15 To: Manuel Zuniga
16 4900 Danford Drive
17 Billings, MT 59106-3836

18 **PLEASE TAKE NOTICE THAT:**

19 The Public Safety Officer Standards and Training Council (POST) believes
20 that you, Manuel Zuniga, are unqualified to hold, or continue to hold, POST
21 certification because of actions which violate the Montana Code Annotated (MCA)
22 and POST's Administrative Rules (ARMs).

23 **POST has therefore REVOKED your Detention/Corrections Basic**
24 **Certificate. From the date of this Notice you no longer hold any valid POST**
25 **certification as a public safety officer in Montana. Pursuant to ARM**
26 **23.13.201, it is unlawful for you to act as a public safety officer, once your**
27 **POST certification has been revoked. Pursuant to Mont. Code Ann. § 44-4-**
404, "it is the responsibility of a public safety officer's appointing authority to

1 apply the employment standards and training criteria established by the
2 council pursuant to this part, including but not limited to... terminating the
3 employment of a public safety officer for failure to meet the minimum
4 standards established by the council pursuant to this part."

5 Below are the assertions of fact and law upon which I, the Executive
6 Director of POST, have taken this action.

7 **I. ASSERTIONS OF FACT**

8 1. Mr. Zuniga was appointed as a Corrections Officer for the Montana
9 Department of Corrections, Montana Women's Prison (MWP) on June 7, 1999.

10 2. Mr. Zuniga was awarded POST Detention/Corrections Basic
11 Certificate # 655 on May 17, 2001.

12 3. On January 31, 2013, POST received a Notice of Termination from
13 MWP which indicated that Mr. Zuniga was involuntarily terminated on January 25,
14 2013, for various misconduct.

15 4. POST sent a letter to Mr. Zuniga on March 1, 2013, notifying him of
16 the allegations against him, and requesting a response within 30 days.

17 5. On March 19, 2013, POST received Mr. Zuniga's response to POST's
18 March 1, 2013 letter.

19 6. In his response, Mr. Zuniga denied the allegations against him were
20 true, and indicated that he was grieving his termination from MWP.

21 7. POST placed Mr. Zuniga's case on hold pending resolution of his
22 grievance.

23 8. On May 8, 2013, in response to its inquiry, POST learned that Mr.
24 Zuniga's grievance had been denied on February 20, 2013. On the same day, POST
25 sent another letter to Mr. Zuniga requesting a release of information for his
26 personnel file.

1 Mr. Zuniga signed the release for his personnel file on May 10, 2013.
2 On July 29, 2013, POST received Mr. Zuniga's personnel file.
3 On July 30, 2013, in response to its request to DOC, POST learned
4 via email that Mr. Zuniga filed a complaint with the Human Rights Bureau, based
5 upon his termination from MWP.
6 POST again placed Mr. Zuniga's case on hold pending the outcome of
7 his Human Rights Bureau action.
8 On December 19, 2014, again in response to its inquiry of DOC,
9 POST learned that Mr. Zuniga's Human Rights Bureau complaint had been
10 dismissed and no action had been taken against MWP for his termination.
11 On January 21, 2015, POST Paralegal/Investigator Katrina Bolger
12 reviewed the administrative investigation report that DOC had completed on Mr.
13 Zuniga at the offices of DOC.
14 Based upon review of DOC's administrative investigation report,
15 POST determined there were additional allegations of misconduct against Mr.
16 Zuniga, beyond what had been included in POST's letter of March 1, 2013.
17 POST staff requested and received from DOC a copy of a video and a
18 copy of a receipt which DOC found in Mr. Zuniga's office, which had been
19 referenced in the report.
20 POST staff conducted a number of interviews of former inmates of
21 MWP.
22 On December 6, 2016, POST sent another letter via certified mail to
23 Mr. Zuniga, outlining the additional allegations and requesting a response within 30
24 days.
25 Mr. Zuniga did not sign for and claim the December 6, 2016 certified
26 letter from POST.
27 On December 12, 2016, POST received a copy of DOC's

1 administrative investigation report, which was the same as the one reviewed by Ms.
2 Bolger on January 21, 2015.
3 21. POST re-sent its December 6, 2016 letter to Mr. Zuniga on January 6,
4 2017, again via certified mail.
5 22. POST's January 6, 2017 letter was delivered to Mr. Zuniga on
6 January 7, 2017.
7 23. Mr. Zuniga did not provide a written response to POST's December 6,
8 2016 or January 6, 2017 letters.
9 24. POST staff investigated the allegations against Mr. Zuniga (while the
10 case was active, and not in periods of hold) from January 2013 until January 2017.
11 POST's investigation of the allegations against Mr. Zuniga included interviews with
12 several former inmates of MWP and review of: Mr. Zuniga's termination letter, Mr.
13 Zuniga's personnel file, DOC's administrative investigation, surveillance video
14 from the MWP, and a receipt which was located in Mr. Zuniga's office.
15 25. The POST investigation revealed the following:
16 26. Mr. Zuniga was terminated from his position at MWP for poor
17 performance and policy issues on January 25, 2013.
18 27. The issues for which Mr. Zuniga was terminated included: failure to
19 carry out assigned duties, failure to meet job performance expectation and
20 responsibilities, and inappropriate behavioral relationships with offenders in
21 custody.
22 28. The DOC administrative investigation found that Mr. Zuniga showed
23 favoritism among inmates and allowed various inmates to have items which they
24 were not cleared to have, such as Bath and Body Works lotion, tennis shoes which
25 were not issued by MWP, and Victoria's Secret underwear.
26
27

1 29. DOC investigators also found a Victoria's Secret receipt in Mr.
2 Zuniga's office which matched the items of Victoria Secret underwear and bras that
3 were discovered in inmate Steffanie Schauf's property.

4 30. Ms. Schauf's property receipt reflected the Victoria's Secret items,
5 and Mr. Zuniga initialed next to them. Ms. Schauf's property also reflected tennis
6 shoes and Bath and Body Works lotions which were initialed by Mr. Zuniga, even
7 though they are not allowed at MWP.

8 31. POST staff interviewed Ms. Schauf via telephone.

9 32. During the interview, Ms. Schauf denied that Mr. Zuniga bought the
10 Victoria's Secret items for her, but she confirmed that he allowed her to have the
11 underwear, tennis shoes and other items which she was not supposed to have.

12 33. DOC investigators found that Alexandria Yellowhorse, another
13 inmate at MWP, was discovered to have two pairs of black tennis shoes which were
14 not approved by MWP.

15 34. DOC investigators also found that Ms. Yellowhorse's tennis shoes
16 were on her property list, and had also been initialed by Mr. Zuniga.

17 35. In its administrative investigation, DOC found that there was merit to
18 the allegations that Mr. Zuniga had "favorite" inmates who received preferential
19 treatment and that he retaliated against inmates who were not his "favorites." DOC
20 investigators also found that there was merit to the many allegations made by
21 several different inmates that Mr. Zuniga made inappropriate comments.

22 36. The DOC investigators also found that during a "shakedown" of
23 MWP on June 23, 2012, Mr. Zuniga allowed Ms. Yellowhorse to hide a bin of extra
24 items she was not supposed to have in Mr. Zuniga's office.

25 37. During the same shakedown, Lieutenants Matthew Harman and Alex
26 Schroeckenstein also located a CD player and CD taped together, hidden among
27 towels in a closet.

1 38. The CD player had a note with it which said "Boss - S. Day would
2 like 2 mail out A.S.A.P. 6-21-12."

3 39. The signature on the note was illegible.

4 40. There was an inmate number on the CD player, 2083354, this number
5 was assigned to Cheren Day.

6 41. During a DOC investigator's interview with Lucinda Leon, an inmate
7 at MWP, Ms. Leon stated that Mr. Zuniga would take canteen items from inmates
8 in Administrative Segregation or locked housing, and he would provide those
9 canteen items to his workers who were said to be his "favorites."

10 42. Ms. Leon stated that when she worked for Mr. Zuniga, he gave her
11 inmates' canteen items even though the items were supposed to be sent back to the
12 warehouse.

13 43. Purchasing Agent Laurel Conover from the canteen warehouse spoke
14 to the DOC investigator regarding the issues with the canteen items.

15 44. Ms. Conover stated that Mr. Zuniga often would not return items that
16 should be credited back.

17 45. One entire order was not returned for credit, and Mr. Zuniga indicated
18 that he had mistakenly thrown it away.

19 46. The DOC investigators also found that another item that was not
20 returned was a razor, which Mr. Zuniga indicated had been "trashed."

21 47. Ms. Conover stated in an interview with DOC investigators, however,
22 that Mr. Zuniga would also request items be credited back to inmates, and he would
23 never return the items.

24 48. Several inmates at MWP would not speak to the DOC investigator
25 due to fear of retaliation by Mr. Zuniga or his workers.

26 49. A former inmate at MWP agreed to be interviewed by POST staff
27 regarding the allegations she made against Mr. Zuniga concerning two instances of

1 inappropriate physical contact. POST Paralegal/Investigator Katrina Bolger
2 interviewed this former inmate on October 13, 2016.

3 50. The former MWP inmate remains concerned to this day about her
4 safety and about retaliation by Mr. Zuniga or those acting on his behalf.

5 51. The former MWP inmate also had been interviewed by a DOC
6 investigator as part of DOC's administrative investigation.

7 52. The former inmate initially made her allegations against Mr. Zuniga
8 in May of 2012, but refused to speak to an investigator until Ms. Yellowhorse was
9 sent to a different facility, due to fear of retaliation from Ms. Yellowhorse, on
10 behalf of Mr. Zuniga.

11 53. The former inmate was moved to Passages in June of 2012 and agreed
12 to an interview with DOC's investigator at that time.

13 54. The former inmate stated the following during her interview with
14 DOC investigators:

15 55. On May 4, 2012, Mr. Zuniga took her, Ms. Yellowhorse and Vilene
16 Not Afraid up to the property room above visiting, then she and Mr. Zuniga entered
17 a separate, caged area above the gym.

18 56. While they were above the gym, Mr. Zuniga began kissing the former
19 inmate, reaching under her shirt and bra to touch her breasts.

20 57. She stated that after about three to five minutes, Mr. Zuniga knelt
21 down in front of her and pulled her pants down just far enough so that Mr. Zuniga
22 could touch her vagina.

23 58. She recounted that Mr. Zuniga rubbed her clitoris about five or six
24 times, then pulled her pants down further, to about mid-thigh, and he began
25 performing oral sex on her.

26 59. The former inmate told Mr. Zuniga "stop" and that it was "crazy," to
27 which Mr. Zuniga responded "don't worry."

1 60. She then heard another inmate, Stacy Limberhand in the gym, and
2 indicated that she may hear them and Mr. Zuniga needed to stop.

3 61. Mr. Zuniga did stop at that time.

4 62. During this time, the former inmate stated that Ms. Yellowhorse was
5 keeping a lookout and Ms. Not Afraid didn't know what was going on.

6 63. Later, on May 14, 2012, Mr. Zuniga took the same inmates to the
7 property room, and then the former inmate and Mr. Zuniga entered an area above
8 the hobby room in the property room.

9 64. At this time, Mr. Zuniga began kissing the former inmate and
10 touching her on top of her clothing.

11 65. The DOC investigator obtained and reviewed video footage of the two
12 dates described by the former inmate and noted that on both dates the described
13 parties entered the areas indicated and were out of view for 16 and 20 minutes each
14 time.

15 66. When POST staff interviewed the former inmate on October 16, 2016,
16 she confirmed what she had told the DOC investigators about "smooching around"
17 with Mr. Zuniga and the incidents of sexual contact with Mr. Zuniga.

18 67. The former inmate also stated to POST that Mr. Zuniga gave her and
19 Ms. Yellowhorse a razor and directed them to hide it in inmate Shawna Brown's
20 cell.

21 68. The former inmate stated that they were to hide the razor in Ms.
22 Brown's cell because Ms. Brown had "snitched" on one of Mr. Zuniga's favorites.

23 69. The former inmate stated that Mr. Zuniga's favorites were referred to
24 within the MWP population on "Zuniga's Princesses."

25 70. She also stated that Mr. Zuniga would allow his workers to come into
26 his office where there were no cameras, and he would give them coffee, creamers,
27 and candy.

1 71. She also stated that Mr. Zuniga allowed his workers to get on
2 Facebook in Mr. Zuniga's office.

3 72. The former inmate and Armanda Cabigas also recalled and related to
4 DOC investigators an incident when the former inmate, Ms. Cabigas, Ms.
5 Yellowhorse and Mr. Zuniga were in an elevator together and Mr. Zuniga made a
6 comment about wanting the three inmates to perform a threesome while he
7 watched.

8 73. Inmate Sabine Bieber confirmed to DOC investigators that Mr.
9 Zuniga told inmates dirty jokes. Ms. Leon stated that Mr. Zuniga had many personal
10 conversations with inmates regarding his marriage and the fact that he and his wife
11 had not had sexual contact for a year and a half.

12 74. DOC investigators found merit to the allegations that Mr. Zuniga
13 made inappropriate comments to inmates.

14 75. During DOC's investigation, it was discovered that Mr. Zuniga was
15 "friends" on Facebook with current and former MWP inmates.

16 76. On his Facebook page, Mr. Zuniga portrayed himself as an
17 "investigator" for the state of Montana, rather than his actual title of Inmate
18 Services Coordinator.

19 **II. ASSERTIONS OF LAW**

20 77. POST properly exercises jurisdiction in this matter pursuant to Mont.
21 Code Ann. § 44-4-403.

22 78. The assertions of fact detailed above implicate the following
23 provisions of the Montana Code Annotated and the Administrative Rules of
24 Montana:

25 **§ 44-4-401, MCA. Definitions.**

26 For the purposes of this part, the following definitions apply:

27 ...

(2) "Public safety officer" means:

(a) a corrections officer who is employed by the department of corrections, established in 2-15-2301, and who has full-time or part-time authority or responsibility for maintaining custody of inmates in a state correctional facility for adults or juveniles;

§ 44-4-403, MCA. Council duties – determinations – appeals.

(1) The council shall:

(c) provide for the certification or recertification of public safety officers and for the suspension or revocation of certification of public safety officers[.]

ARM 23.13.201. Minimum Standards for the Appointment and Continued Employment of Public Safety Officers.

(1) All public safety officers must be certified by POST and meet the applicable employment, education, and certification standards as prescribed by the Montana Code Annotated....

ARM 23.13.702. Grounds for Sanction, Suspension, or Revocation of POST Certification

(1) The executive director or the council will consider any legitimate allegation made against any public safety officer that may result in the sanction, revocation, or suspension of that officer's certification.

(2) The grounds for sanction, suspension, or revocation of the certification of public safety officers are as follows:

(a) willful falsification of any information in conjunction with official duties, or any single occurrence or pattern of lying, perpetuating falsehoods, or dishonesty which may tend to undermine public confidence in the officer, the officer's employing authority, or the profession;

(g) neglect of duty or willful violation of orders or policies, procedures, rules, or regulations;

(h) willful violation of the code of ethics set forth in ARM 23.13.203;

1 (i) other conduct or a pattern of conduct which tends to significantly
2 undermine public confidence in the profession;

3 ...

4 (l) acts that are reasonably identified or regarded as so improper or
5 inappropriate that by their nature and in their context are harmful to
6 the employing authority's or officer's reputations;

7 **ARM 23.13.203. Code of Ethics**

8 ...

9 (4) The oath of the public safety officers' code of ethics is, in part, as
10 follows:

11 (a) My fundamental responsibility as a public safety officer is to
12 serve the community, safeguard lives and property, protect the
13 innocent, keep the peace, and ensure the constitutional rights of all
14 are not abridged;

15 ...

16 (f) I will not engage in nor will I condone any acts of corruption,
17 bribery, or criminal activity; and will disclose to the appropriate
18 authorities all such acts. I will refuse to accept any gifts, favors,
19 gratuities, or promises that could be interpreted as favor or cause me
20 to refrain from performing my official duties;

21 ...

22 (i) I will at all times ensure that my character and conduct is
23 admirable and will not bring discredit to my community, my agency,
24 or my chosen profession.

25 40. The POST Executive Director has determined, as a matter of law, that
26 Mr. Zuniga's actions, as stated above in the ASSERTIONS OF FACT, constitute
27 grounds to revoke the "detention/correction officer certificate" he currently holds for
the following reasons:

41. POST is statutorily tasked with "provid[ing] for the certification ... of
public safety officers...." Mont. Code Ann. § 44-4-403(1)(c) (2015).

42. "Corrections officers" are defined by Mont. Code Ann. § 44-4-
401(2)(a), as "public safety officers."

43. Thus, all "corrections officers" are "public safety officers". Mont
Code Ann. §§ 44-4-401(2)(a).

1 44. "Corrections officers" are required by ARM 23.13.201(1) to be
2 certified by POST.

3 45. POST therefore has jurisdiction over the certification of "corrections
4 officers," who must possess a "detention/correction officer basic certificate" in order
5 to operate as a "corrections officer." ARM 23.13.201(1). In addition to a "basic"
6 certificate, POST allows peace officers to gain "intermediate," and "advanced"
7 certificates based on their training and experience. *See, e.g.,* ARMs 23.13.207-208.

8 46. The Executive Director can revoke Mr. Zuniga's "corrections officer
9 basic certificate" based on Mr. Zuniga's misconduct pursuant to Mont. Code Ann.
10 § 44-4-403 and ARM 23.13.703(9)(d), and according to the procedures stated in
11 ARMs 23.13.704-720.

12 47. Mr. Zuniga's conduct violated ARM 23.13.203(4)(f) which states that
13 "My fundamental responsibility as a public safety officer is to serve the community,
14 safeguard lives and property, protect the innocent, keep the peace...." Mr. Zuniga
15 continually intimidated inmates with his position of authority and actively attempted
16 to cause problems for inmates who didn't do what he wanted them to do. Because
17 Mr. Zuniga failed to "safeguard lives" and "keep the peace" his detention/correction
18 officer certificate is revoked.

19 48. Mr. Zuniga's conduct also violated ARM 23.13.203(4)(f), which states
20 that "I will not engage in nor will I condone any acts of corruption, bribery, criminal
21 activity; and will disclose to the appropriate authorities all such acts...." This ARM
22 does not require that Mr. Zuniga be convicted or even charged with a crime—it
23 condemns *engaging in* criminal activity. Because Mr. Zuniga engaged in criminal
24 activity by engaging in sexual contact with an inmate and providing contraband to
25 inmates, engaged in acts of corruption and bribery by providing canteen items to his
26 favorite inmates and intimidating inmates he didn't like, his detention/correction
27 officer certificate is revoked.

1 49. Mr. Zuniga also violated subsection (i) of ARM 23.13.203(4), which
2 states "I will at all times ensure that my character and conduct is admirable and will
3 not bring discredit to my community, my agency, or my chosen profession." Mr.
4 Zuniga did not conduct himself admirably and brought discredit to his community,
5 agency, and profession by almost all of his actions as stated in the ASSERTIONS
6 OF FACT. Because of this violation of his Code of Ethics Mr. Zuniga's
7 detention/correction officer certificate is revoked.

8 50. Subsection (a) of ARM 23.13.702(2) states that "willful falsification
9 of any information in conjunction with official duties, or any single occurrence or
10 pattern of lying, perpetuating falsehoods, or dishonesty which may tend to
11 undermine public confidence in the officer, the officer's employing authority, or the
12 profession" is grounds for sanction, suspension or revocation of POST certification.
13 Mr. Zuniga held himself out to be an "investigator" for the state on his Facebook
14 page, which was blatantly false. For this violation of ARM 23.13.702(2)(a), Mr.
15 Zuniga's detention/correction officer certificate is revoked.

16 51. Mr. Zuniga also violated Subsection (g) of ARM 23.13.702(2), which
17 prohibits the "neglect of duty or willful violation of orders or policies, procedures,
18 rules, or regulations." Mr. Zuniga's conduct, as stated in the ASSERTIONS OF
19 FACT, constitutes a violation of ARM 23.13.702(2)(g) and his detention/correction
20 officer certificate is, therefore, revoked.

21 52. Subsection (h) of ARM 23.13.702(2) prohibits a "willful violation of
22 the code of ethics set forth in ARM 23.13.203." As already shown above, Mr.
23 Zuniga's conduct violated the Code of Ethics in several ways. For these violations
24 of ARMs 23.13.702(2)(h), and 203(4), Mr. Zuniga's detention/correction officer
25 certificate is revoked.

26 53. Subsection (i) of ARM 23.13.702(2) prohibits "other conduct or a
27 pattern of conduct which tends to significantly undermine public confidence in the

1 profession." Almost all of the facts in the ASSERTIONS OF FACT tend to
2 undermine public confidence in the profession. For this violation of ARM
3 23.13.702(2)(i), Mr. Zuniga's detention/correction officer certificate is revoked.

4 54. Finally, subsection (l) of ARM 23.13.702(2) prohibits "acts that are
5 reasonably identified or regarded as so improper or inappropriate that by their nature
6 and in their context are harmful to the employing authority's or officer's
7 reputations." Mr. Zuniga's actions were so improper and inappropriate that they
8 provide a reason to revoke Mr. Zuniga's detention/correction officer certificate.

9 55. Based on all of these violations of POST ARMs 23.13.702(2)(a), (g),
10 (h), (i), and (l), as well as violations of POST ARM 23.13.203(4)(a), (f), and (i), Mr.
11 Zuniga's detention/correction officer certificate is revoked. Again, any one of these
12 violations of any one of these ARMs would supply sufficient grounds to revoke Mr.
13 Zuniga's certificate. Together, they overwhelmingly weigh in favor of revocation.

14 Conclusion

15 56. As a matter of law, I, the POST Executive Director, have determined
16 that Manuel Zuniga is not suitable to hold any POST certificates as a public safety
17 officer in Montana and full revocation of his POST "detention/correction officer
18 basic certificate" is appropriate.

19 III. OPPORTUNITY FOR HEARING

20 Under the Montana Administrative Procedure Act (Title 2, Chapter 4,
21 Montana Code Annotated), this matter must be resolved formally, as it involves
22 "licensure to pursue a profession or occupation." Mont. Code Ann. § 2-4-603(2).
23 In this case, you can proceed with this matter by either of the following:

24 a. If you do not contest the assertions of fact or law contained in this
25 Notice, you need not take any action.

26 b. If you do contest the allegations of fact or assertions of law contained
27 in this Notice, you are entitled to a hearing as provided by the Montana

1 Administrative Procedure Act (Mont. Code Ann. §§ 2-4-601, *et seq.*). You have a
2 right to be represented by an attorney, at your own expense, at such hearing and
3 during related proceedings. If you want to have a hearing to contest POST's
4 action outlined in this Notice, you must notify the Hearing Examiner, Jeffrey
5 Sherlock, 613 Power, Helena, Montana 59601, in writing, within thirty (30)
6 days of the date of your receipt of this Notice. If you do not notify the Hearing
7 Examiner within thirty (30) days of the date of your receipt of this Notice, you
8 waive your right to a hearing.

9 By requesting a hearing within the allowed time, you are not waiving the
10 ability to resolve this matter by settlement. During the hearing process, a
11 disposition may be made by stipulation, agreed settlement, consent order, or default.
12 If you wish to discuss a settlement, or for any other questions regarding this case,
13 please contact contested case legal counsel for POST:

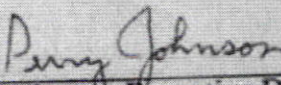
14 Robert Stutz
15 Assistant Attorney General
16 Agency Legal Services Bureau
17 1712 Ninth Ave
18 P.O. Box 201440
Helena, MT 59620
(406) 444-2071
rstutz@mt.gov

19 If you request a hearing and there is no settlement of the matter during the
20 early hearing processes, the matter will proceed to a hearing. The Hearing
21 Examiner will make findings of fact, conclusions of law, and a proposed disposition
22 based on the evidence presented at the hearing. The full POST Council will then
23 review the Hearing Examiner's findings, conclusions, and proposed disposition and
24 vote on whether to accept, reject, or modify them pursuant to Mont. Code Ann. § 2-
25 4-621.

1 **IV. POSSIBILITY FOR DEFAULT**

2 Failure to give notice, in writing, of your request for a hearing within thirty
3 (30) days of the date of your receipt of this Notice, or a failure to otherwise appear,
4 respond, or contest POST's action throughout any contested case hearing process
5 you request, will be considered a waiver of your right to a hearing and, if a hearing
6 process has already begun, a default order against you may be entered. It is your
7 responsibility to maintain valid contact information with POST or the Hearing
8 Examiner and notify both POST and the Hearing Examiner of any change in contact
9 information during the pendency of any contested case proceeding you initiate.

10 DATED this 28th day of February, 2017.

11
12 
13 Perry Johnson, Executive Director
14 Montana POST Council

15 **CERTIFICATE OF SERVICE**

16 I hereby certify that I caused a true and accurate copy of the foregoing
17 Notice of POST Action and Opportunity for Hearing to be sent to:

18 Manuel Zuniga
19 4900 Danford Dr.
Billings, MT 59106-3836

20 Joan Daly-Shinners, Warden
21 Montana Women's Prison
701 South 27th
22 Billings, MT 59101

23
24 DATED: 2/28/17 
25
26
27